



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Electrophysics Corp.

File: B-258674

Date: February 13, 1995

Frank J. Vallese for the protester.
Donald M. Suica, Esq., and Duane I. Zezula, Esq.,
Department of the Treasury, for the agency.
Adam Vodraska, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in
the preparation of the decision.

DIGEST

Agency properly rejected low bid for night viewing
pocketoscope with integral infrared illuminator as
nonresponsive where descriptive literature submitted with
the bid failed to show that the offered product would
satisfy the salient characteristic that the illuminator be
integral with the pocketoscope.

DECISION

Electrophysics Corp. protests the rejection of its low
bid as nonresponsive under invitation for bids (IFB)
No. IRS-94-0088, issued by the Department of the Treasury,
Internal Revenue Service (IRS), for night viewing equipment
to be used for law enforcement purposes.

We deny the protest.

Line Item 0001A of the IFB, as amended, called for bids
for the supply of 38 "Night Viewing Pocketoscope[s] with
Integral Infrared Illuminator[s]." The IFB required that
descriptive literature be submitted with bids in order to
evaluate the technical acceptability of the offered product
with regard to specified salient characteristics, and

¹A night viewing pocketoscope is a hand-held device that
amplifies light to permit covert surveillance under
conditions of minimal light. An infrared illuminator is a
device which enhances the low-light performance of night
viewing devices. The IFB also contained line items for
quantities of relay lenses and objective lenses.

included the "Descriptive Literature" clause, Federal Acquisition Regulation (FAR) § 52.214-21, which, among other things, states:

"(c) The failure of descriptive literature to show that the product offered conforms to the requirements of this solicitation will require rejection of the bid."

The clause defines descriptive literature as "cuts, illustrations, drawings, and brochures" sufficient to verify the details of the offered product such as design, components, and assembly. One of the salient characteristics of the night viewing pocketscope with integral infrared illuminator is that it has an "integral infrared illuminator."

Electrophysics submitted the low bid which offered its AstroScope 9300-00 pocketscope and stated that its offer "includes" its Model 9900/93 AstroLaser Zoom IR Illuminator. The night viewing pocketscope is described on a separate cut from the separately described illuminator. The literature does not describe how the pocketscope would attach to the illuminator. IRS rejected Electrophysics's bid as nonresponsive because the descriptive literature submitted with its bid did not show "how the AstroLaser Zoom Illuminator would be mounted and become an integral part of the AstroScope 9300." IRS made award to the second low bidder and this protest followed.

Where, as here, an IFB requires descriptive literature to establish the offered product's conformance with specified IFB requirements, a bid accompanied by descriptive literature that fails to clearly show such conformance must be rejected as nonresponsive. J.T. Sys., Inc., B-255464, Feb. 24, 1994, 94-1 CPD ¶ 150. Where the descriptive literature is subject to more than one interpretation, one of which would mean that the product offered does not clearly conform to the specifications, the bid is ambiguous and therefore nonresponsive. AMSCO Scientific, B-255313, Feb. 15, 1994, 94-1 CPD ¶ 112.

The record indicates that in requiring that the illuminator be integral with the pocketscope, the IFB contemplated an illuminator that functions as a single interdependent unit with the pocketscope.² Electrophysics's literature does not show its proposed illuminator as integral with its pocketscope; instead, Electrophysics submitted separate cuts for each component with no discussion as to how they

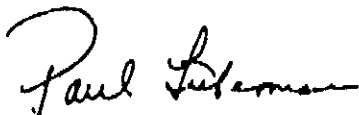
²The second low bidder's descriptive literature shows such a product.

were connected. Nor does either cut depict or provide any description of how the devices could be attached and operated together, or the features, such as connectors, apertures, or mounts, that would make this possible. Despite Electrophysics's reference to the illuminator as including an "adjustable mount," the protester concedes that its literature does not show the illuminator mounted on the pocketscope.³

The protester also references its general "blanket" statement of compliance that the "Electrophysics AstroScope 9300-00 meets all the specifications as set forth in the bid specifications for item 0001A." However, such blanket statements of compliance or of the offeror's belief that its product is functionally compliant are not enough to demonstrate technical acceptability; rather, an offeror must affirmatively establish compliance with the salient characteristics. See Infrared Technologies Corp., B-255709, Mar. 23, 1994, 94-1 CPD ¶ 212.

Accordingly, because the descriptive literature submitted with Electrophysics's bid failed to demonstrate that the illuminator was "integral" with the pocketscope, the agency properly rejected the bid as nonresponsive.

The protest is denied.

for 
Robert P. Murphy
General Counsel

³While Electrophysics also states that its illuminator includes an "integral 9V battery for [the pocketscope]," the record shows that the illuminator has its own battery and the pocketscope is powered by separate batteries; this statement does not demonstrate that the illuminator is integral with the pocketscope. The agency had initially rejected Electrophysics's bid on the additional basis that the batteries for the proposed equipment exceeded the specified maximum number/size of batteries. However, because the agency subsequently discovered that the awardee's illuminator also exceeded this limitation, the agency waived this requirement for both the protester and the awardee, and, consequently, the protester was not prejudiced as a result. See Propper Mfg. Co., Inc., B-245366, Dec. 30, 1991, 92-1 CPD ¶ 14; Merrick Eng'g, Inc., B-238706.3, Aug. 16, 1990, 90-2 CPD ¶ 130.